

**Introduced by Senator Wright**

February 14, 2011

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An act to add Sections 10968, 10968.5, 10969, and 10970 to the Welfare and Institutions Code, relating to public social services.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 320, as introduced, Wright. Public social services: hearings.

Existing law authorizes an applicant for or recipient of public social services who is dissatisfied with certain actions of the county welfare department to request a hearing from the State Department of Social Services.

This bill would require the county appeals representative to review all evidence in the county's possession prior to the hearing and, if the representative finds prescribed occurrences, to offer the claimant a conditional withdrawal. This bill would require the conditional withdrawal to specify the actions that the applicant or recipient and the county shall complete within 30 days of the conditional withdrawal being signed by the claimant and received by the county representative.

This bill would also require the county to issue aid paid pending within 5 working days from the date of the filing of a hearing, and if the county has not issued aid paid pending by the end of the 4th business day, would require that the county representative to authorize the aid paid pending, as prescribed.

This bill would authorize a claimant to request a hearing by telephone, and require the notice of action informing recipients of the right to a hearing to inform the applicant or recipient of his or her right to have a hearing in person, by telephone, or in the claimant's home if the claimant is unable to attend an in-person hearing due to a disability. This bill would provide that if a claimant does not request that he or

she prefers to have a hearing by telephone or an in-person hearing, the department is required to schedule an in-person hearing.

Existing law requires, if regulations require an agency to write a position statement concerning the issues in question in a fair hearing or if the agency chooses to develop such a statement, that not less than 2 working days prior to the date of the hearing the agency make available to the applicant for, or recipient of, public social services a copy of the agency's position statement, with an exception. Existing law requires the hearing to be postponed at the request of the applicant or recipient if the position statement is not made available as required.

This bill would require the county representative to provide the administrative law judge with the position statement, if any, and authorize the administrative law judge to request this statement up to 2 working days prior to the hearing. This bill would require the administrative law judge to determine, based upon the position statement and a tentative hearing, as prescribed, whether the county has met its burden of proof of establishing a prima facie case. This bill would require the administrative law judge to issue a decision fully favorable to the claimant if the judge finds that the county has not met its burden, and, if the county has met its burden, would require the decision to set forth a finding of all the facts and laws that led to that conclusion.

By imposing a higher level of service on county appeals representatives, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 10968 is added to the Welfare and
- 2 Institutions Code, to read:
- 3 10968. (a) Prior to the hearing, the county appeals
- 4 representative shall review all evidence in the county's possession
- 5 relevant to the state hearing claim.

(1) If the hearing concerns a claimant's eligibility for a benefit or service and the county representative finds that certain acts or evidence would establish the claimant's eligibility for that benefit or service, that the county has rescinded the proposed adverse action, or concludes that the county erred, then the county representative shall offer the claimant a conditional withdrawal ordering the county to issue the benefits or provide the service for which the claimant is eligible after the claimant meets conditions, if any, of the conditional withdrawal.

(2) If the hearing concerns the validity of a CalWORKs overpayment or CalFresh benefit overissuance allegation and the county representative does not find evidence adequate to support the validity of the overpayment or overissuance allegation then the county representative shall offer the claimant a conditional withdrawal ordering the county both to cancel permanently the overpayment or overissuance allegation, and to refund to the claimant any money already collected toward repayment of the alleged overpayment or overissuance.

(b) A conditional withdrawal pursuant to this section shall specify the actions that both parties shall complete within 30 days from the date the conditional withdrawal form signed by the claimant is received by the county appeals representative. The county shall issue a compliance notice describing its compliance with the terms of the conditional withdrawal, as well as any adequate, timely, and language-compliant notices required by program rules for the action at issue, within 30 days following the county hearing representative's receipt of the signed conditional withdrawal. If the county fails to issue the compliance notice within 30 days, the claimant shall be deemed to have prevailed on all of his or her claims. Upon receiving a timely compliance notice from the county, the claimant shall have 90 days, subject to the good cause provisions of Section 10951, to file for a state hearing if the claimant is dissatisfied with the terms of the compliance notice.

SEC. 2. Section 10968.5 is added to the Welfare and Institutions Code, to read:

10968.5. The county shall issue aid paid pending within five working days from the date of the filing of a hearing, as appropriate. If the county has not issued aid paid pending by the end of the fourth business day of the filing of a hearing pursuant to this division, the county appeals representative shall authorize

1 aid paid pending, as appropriate, in accordance with both federal  
2 and state laws and regulations.

3 SEC. 3. Section 10969 is added to the Welfare and Institutions  
4 Code, to read:

5 10969. (a) The Legislature finds and declares that the financial  
6 cost of transportation to attend an administrative hearing prevents  
7 claimants from accessing a hearing and exercising their full right  
8 to due process of law. A telephone hearing would enable the  
9 claimant to have a hearing from the claimant's residence without  
10 incurring the cost of traveling to the hearing location.

11 (b) An applicant or recipient who requests a hearing pursuant  
12 to this chapter shall have the right to have a hearing conducted in  
13 person, or, in the case of disability, an in-person hearing in the  
14 claimant's home. A claimant may request a hearing by telephone.  
15 The notice of action informing recipients under this division of  
16 the claimant's right to a hearing under this chapter shall inform  
17 the applicant or recipient of his or her right to have a hearing in  
18 person, by telephone, or in the claimant's home if the claimant is  
19 unable to attend an in-person hearing due to a disability.

20 (c) The department shall accept the claimant's selection of  
21 hearing type. The election by the applicant or recipient of any type  
22 of hearing shall not affect the time period for setting the hearing.

23 (d) The notice informing the claimant of the time and place of  
24 the hearing shall inform the claimant how to submit evidence and  
25 other documents if the claimant will be appearing by telephone.

26 (e) For applicants or recipients who request either a hearing by  
27 telephone or a home hearing, the county responsible for the  
28 administrative hearing shall prepare and mail the position  
29 statement, if any, to the claimant and the designated representative  
30 so that the position statement will be received at least two working  
31 days prior to the hearing, in accordance with Section 10952.5.

32 (f) If a claimant does not request that he or she prefers to have  
33 a hearing by telephone or an in-person hearing, the department  
34 shall schedule an in-person hearing.

35 SEC. 4. Section 10970 is added to the Welfare and Institutions  
36 Code, to read:

37 10970. (a) The county representative shall provide the  
38 administrative law judge with a copy of the county position  
39 statement, if any, in accordance with Section 10952.5. The

1 administrative law judge may request this statement up to two  
2 working days prior to the hearing.

3 (b) If the county position statement and any attachments to it  
4 contain enough information to satisfy the county's burden of proof  
5 of establishing a prima facie case, then the hearing shall go forward  
6 and the administrative law judge shall set forth in his or her  
7 decision a finding of all of the facts and laws that led to the  
8 conclusion that the county met its burden of proof prior to the  
9 commencement of the hearing.

10 (c) If the county position statement and its attachments do not  
11 meet the county's burden of proof, then the administrative law  
12 judge shall hold a limited hearing for the purposes of announcing  
13 the tentative finding that the county has failed to meet its burden  
14 and to hear any testimony regarding why the county believes its  
15 position statement states a prima facie case. If the administrative  
16 law judge upholds his or her tentative determination that the county  
17 has not met its burden, the administrative law judge shall issue a  
18 decision after the limited hearing fully favorable to the claimant.

19 SEC. 5. If the Commission on State Mandates determines that  
20 this act contains costs mandated by the state, reimbursement to  
21 local agencies and school districts for those costs shall be made  
22 pursuant to Part 7 (commencing with Section 17500) of Division  
23 4 of Title 2 of the Government Code.